

Supreme Court, U.S.

FILED

JUN 9 1988

REGISTRATION OF MAIL, JR.
COURT

No. 87-1509

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1987

DAVID T. HODDER,

Petitioner.

v.

THE UNITED STATES OF AMERICA,

Respondent.

*On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit*

PETITIONER'S REPLY

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June 6, 1988



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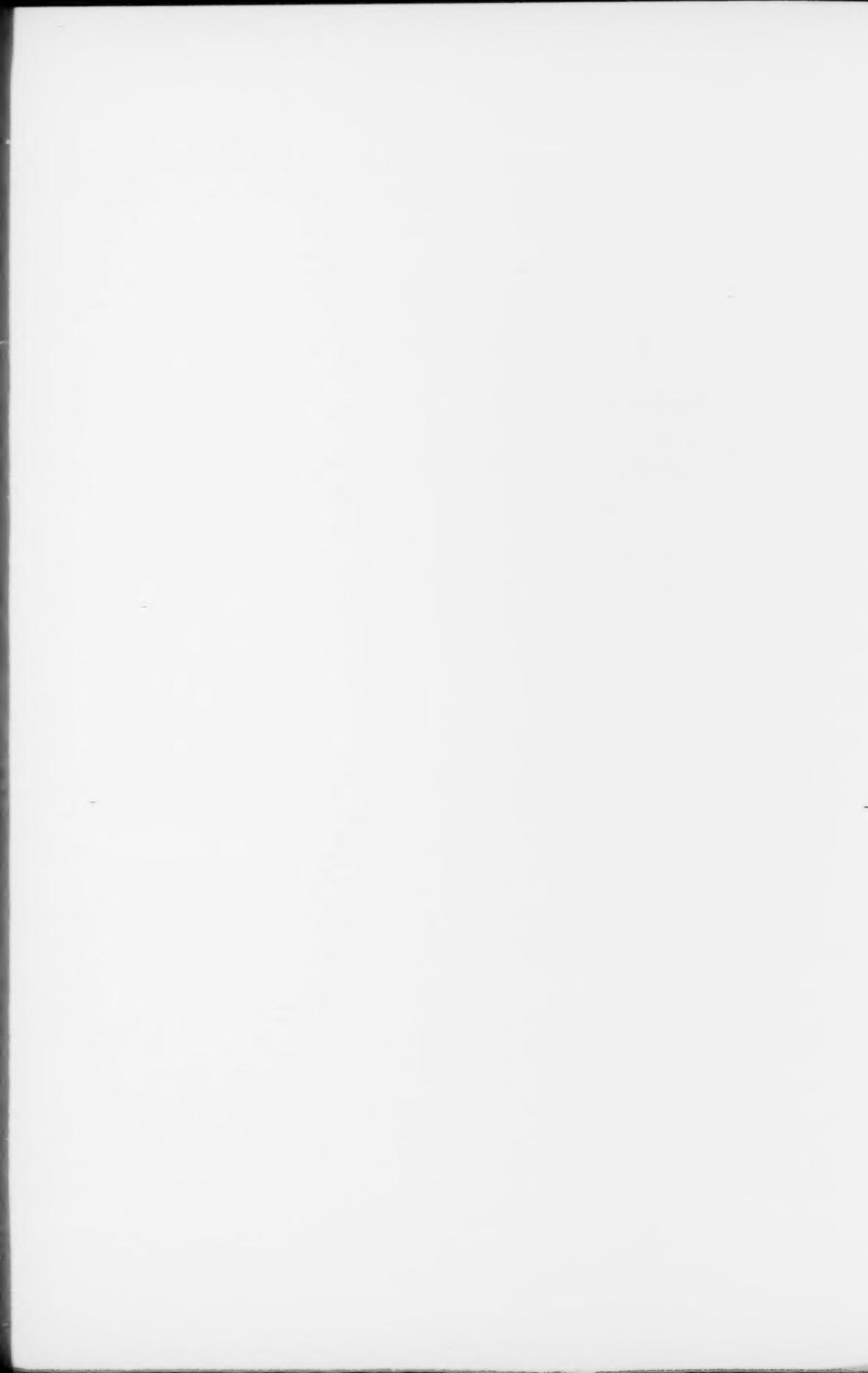
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Two points made in the Brief for the United States in Opposition merit reply:

1. The present case does not involve a narrowing variance of the kind that the Court dealt with in United States v. Miller, 471 U.S. 130 (1985). The district court's factual findings in this case make it clear that the conspiracy of which petitioner was convicted was different in time and object from the conspiracy in the indictment. The indictment alleged a "pre-award" conspiracy that had as its object, from petitioner's standpoint, the award of the underlying contract. The district court convicted Mr. Hodder of entering into a conspiracy that was initiated after the contract had been awarded in exchange for such "subtle benefits" as might accrue from having a "continued close relationship" with the government employee. That is not the crime that the

grand jury was persuaded that there was probable cause to charge. It is not clear the grand jury would have found probable cause to indict a person of the stature of petitioner as participant in a corrupt conspiracy with a low level government employee in exchange for "subtle benefits" such as assuring only "superficial scrutiny" of his performance and requests for progress payments.

As Petitioner reads its brief, the government acknowledges that there was insufficient evidence to support a finding that the conspiracy was formed prior to the award of the contract (Br. Opp. at 6). It is thus clear that the issue of whether the variance was impermissible is clearly framed in this case.

2. The issues presented merit this Court's attention because they arise in context with government contracting. The federal government conducts a substantial

part of its business by entering into agreements with private contractors. Those are legitimate transactions which require the making of agreements. The questions presented in this case warrant review because the Court should determine what procedures the government must observe when it seeks to extend liability for misconduct by one of its own employees to a private contractor.¹

Respectfully submitted,

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1. The government understates the consequences of the conviction to petitioner as an individual (Br. Op. at 2). Those matters are largely irrelevant, however, in determining whether this case merits the Court's review.